item, may not be asserted in the partnership level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner level defenses are limited to those that are personal to the partner or are dependant upon the partner's separate return, and cannot be determined at the partnership level. Examples of these determinations are: whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b)(penalties applicable only where return is filed), or section 6664(c)(1)(reasonable cause exception) subject to partnership level determinations as to the applicability of section 6664(c)(2).

(e) *Cross reference.* See §§ 301.6231(c)–1T and 301.6231(c)–2T for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

[T.D. 8128, 52 FR 6781, Mar. 5, 1987, as amended by T.D. 8808, 64 FR 3838, Jan. 26, 1999]

§ 301.6222(a)–1T Consistent treatment of partnership items (temporary).

(a) *In general.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item by the partnership in all respects including the amount, timing, and characterization of the item.

(b) *Treatment must be consistent with partnership return.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item on the partnership return. Thus, a partner who treats an item consistently with a schedule or other information furnished to the partner by the partnership has not satisfied the requirement of paragraph (a) of this section if the treatment of that item is inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule, see § 301.6222(b)–3T.

(c) *Examples.* The following examples illustrate the principles set forth in this section.

Example 1. B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 1983, P receives an advance payment for services to be performed in 1984 and reports this amount as income for calendar year 1983. However, B reports B's distributive share of this amount on B's income tax return for 1984 and not on B's return for 1983. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example 2. Partnership P incurred certain start-up costs before P was actively engaged in its business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of that item by P.

Example 3. D is a partner in partnership P which reports a loss of $100,000 on its return, $5,000 of which it reports on the Schedule K–1 attached to its return as D's distributive share. However, P reports $15,000 as D's distributive share of P's loss on the Schedule K–1 furnished to D. D reports the $15,000 loss on D's income tax return. D has not satisfied the consistency requirement. See, however, § 301.6222 (b)–3 for an election to be treated as having reported the inconsistency.

[T.D. 8128, 52 FR 6781, Mar. 5, 1987]

§ 301.6222(a)–2T Application of consistency and notification rules to indirect partners (temporary).

(a) *In general.* The consistency requirement of § 301.6222(a)–1T is generally applied with respect to the source partnership. For purposes of this section, the term "source partnership" means the partnership (within the meaning of section 6231(a)(1)) from which the partnership item originates.

(b) *Indirect partner files consistently with source partnership.* An indirect partner who treats an item from a source partnership in a manner which is consistent with the treatment of that item on the return of the source partnership satisfies the consistency requirement of section 6222(a) regardless of whether the indirect partner treats that item in a manner which is consistent with the treatment of that item by the pass-thru partner through which the indirect partner holds the interest in the source partnerhip. Under these circumstances, therefore, the Service shall not send to the indirect

partner the notice described in section 6231(b)(1)(A).

(c) *Indirect partner files inconsistently with source partnership*—(1) *Indirect partner notifies Service of inconsistency.* An indirect partner who—

(i) Treats an item from a source partnership in a manner which is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1T,

shall not be subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(2) *Indirect partner does not notify Service of inconsistency.* Except as provided in paragraph (c)(3) of this section, an indirect partner who—

(i) Treats an item from a source partnership in a manner which is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Fails to file a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1T,

is subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(3) *Indirect partner files consistently with a pass-thru partner that notifies the Service of the inconsistency.* If an indirect partner treats an item from a source partnership in a manner which is consistent with the treatment of that item by a pass-thru partner through which the indirect partner holds the interest in the source partnership and that pass-thru partner—

(i) Treats that item in a manner that is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1T,

The indirect partner is not subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(d) *Examples.* The following examples illustrate the principles set forth in this section.

Example 1. One of the partners in Partnership A is Partnership B, which has four equal partners C, D, E, and F. Both A and B are partnerships within the meaning of section 6231(a)(1). On its return, A reports $100,000 as B's distributive share of A's ordinary income. B, however, reports only $80,000 as its distributive share of the income and does not notify the Service of this inconsistent treatment with respect to A. C reports $20,000 as its distributive share of the item. Although C reports the item consistently with B, C is subject to a computational adjustment to conform the treatment of that item on C's return to the treatment of that item on the return of A.

Example 2. Assume the same facts as in example 1 except that B notified the Service of its inconsistent treatment with respect to source partnership A. C is not subject to a computational adjustment.

Example 3. Assume the same facts as in example 1. D reports only $15,000 as D's distributive share of the income and does not report the inconsistency. F reports only $9,000 as its distributive share of the item but reports this inconsistency with respect to source partnership A. D is subject to a computational adjustment to conform the treatment of that item on D's return to the treatment of that item on the return of A. F is not subject to a computational adjsutment.

Example 4. Assume the same facts as in example 3 except that F reported the inconsistency with respect to B and did not report the inconsistency with respect to source partnership A. F is subject to a computational adjustment to conform the treatment of that item on F's return to the treatment of that item on the return of A.

Example 5. Assume the same facts as in example 1. E reports $25,000 as its distributive share of the item. Regardless of whether E reports the inconsistency between its treatment of the item and that by B, E is neither subject to a computational adjustment to conform E's treatment of that item to that of B nor subject to the notice described in section 6231(b)(1)(A) with respect to any such notification of inconsistent treatment.

[T.D. 8128, 52 FR 6781, Mar. 5, 1987]

§ 301.6222(b)–1T Notification to Service when partnership items are treated inconsistently (temporary).

The statement identifying an inconsistency described in section 6222(b)(1)(B) shall be filed by filing the